

THE ADMINISTRATRIX OF ROBERT T. SPENCE.

[To accompany bill H. R. No. 428.]

MAY 25, 1842.

Mr. COWEN, from the Committee of Claims, submitted the following

REPORT:

The Committee of Claims, to which was referred the petition of the administratrix of the late Robert T. Spence, report:

That the petitioner represents that a judgment has been rendered against her, as administratrix of Robert T. Spence, upon a purser's official bond, in which her intestate was security for purser G. K. Spence for the sum of \$1,410 10, debt and interest. The petitioner alleges that G. K. Spence sustained losses by discount paid on Treasury notes by him, as purser, received at par of the United States, in 1815; that he should be allowed credit for such loss in his account, which has not been done. The object of the petition is to obtain an act of Congress authorizing this credit on the judgment of the United States against the petitioner. The committee believe it to have been the practice of Congress to grant relief in such cases, where the fact of loss is fully proved. This practice the committee think just and equitable. Disbursing agents of the Government who, as such agents, receive depreciated funds to pay out in the public service to Government creditors, and are compelled to exchange the depreciated funds for others, at a loss, in order to satisfy the demands of those creditors, have, as the committee think, clear and unquestionable right to indemnity from the United States. The only difficulty in this case is in the proof of loss. The claim is ancient. It arose in the year 1815; and it is not to be expected that deficiencies of proof can at this late day be supplied by the memory of living witnesses, who were not concerned in the transactions. The evidence before the committee to the fact of loss to G. K. Spence, by discount on these notes, consists of certificates, or papers purporting to be certificates, of persons to whom he paid discount, in most of the cases in which it is alleged the discount was paid, and the affidavit of G. K. Spence. These supposed certificates are six in number. They purport to have been given in April and May, 1815, four of them by S. & M. Allen, one for S. & M. Allen by George Clark, and one by William B. B. Young. They appear to be genuine. This subject seems to have been brought before Congress as early as 1820; and, on the 28th day of April of that year, a bill passed the House of Representatives to authorize the proper accounting officers of the Treasury Department "to audit and settle the account of Groome Keith Spence, and to allow him such sums as may appear equitable and just, in consequence of the loss sustained in the sale

of certain Treasury notes, for and on account of the United States." By a letter of the Fourth Auditor, in reply to inquiries by the chairman of the committee, dated April 9, 1842, it appears that G. K. Spence made inquiry, in 1833, of the then Fourth Auditor for his papers, and in reply was informed that the papers could not be found in that office. The Fourth Auditor, in his letter replying to the inquiry in 1833, stated: "As the act for your relief passed the House of Representatives, it is probable the papers were sent with it to the Senate, and will be found on file in the office of their Secretary." Upon the receipt of this letter of the present Auditor by the chairman of the committee, he caused inquiry to be made for the papers, first of the clerk of the Senate, without success, and then of the clerk of the House of Representatives, with whom they were found. These facts are noticed here as proof that these are ancient papers, and that G. K. Spence has not manifested that solicitude about their custody which it is reasonable to suppose he would have done had they been spurious.

These six certificates, which show a payment by G. K. Spence, in the spring of 1815, on account of discount on Treasury notes which he says in his affidavit was for and on account of the United States, of \$245 10, the committee receive and regard as evidence. They are herewith printed, and the payments are specifically stated in the affidavit of G. K. Spence, which is also herewith printed.

The question presented itself to the committee, whether G. K. Spence should be admitted to testify in this case. He is no party to the suit. The judgment against the petitioner cannot be used as evidence either for or against the principal; neither can the credits upon that judgment, any further than they tend to prove payment; and whether they do or do not show payment is an open question, susceptible of explanation. Unless the committee are wrong in this, G. K. Spence has no interest in the event of this suit. If the entry of a credit upon the judgment against the petitioner will not be evidence for the witness in proof of payment, to be used by him at the suit of the United States on the bond, he is without interest in the decision of this question. The effect of a rejection of the prayer of the petitioner would be to continue his indebtedness to the United States to the amount of the claim under consideration, until payment by the petitioner, when he would become her debtor, and be, to that extent, entitled to a credit on his present liability to Government.

Admitting the affidavit of G. K. Spence, it is confirmatory of the evidence in the certificates of the brokers, and also proves another item, for premium paid on an exchange of Treasury notes for one thousand Spanish dollars for the use of the frigate *Constellation*. Mr. Spence states the claim on this account to be \$253 32. From other statements of Mr. Spence, contained in other papers before the committee, it appears that this sum was originally \$175, and was increased from that sum to \$253 32 by interest and costs, which accrued upon his transaction and suit with Commodore Elliott, as stated in his affidavit. This is further sustained by a memorandum on file among the papers, which purports to have been taken from the records of a "Baltimore county court" of a suit against the special bail of Mr. G. K. Spence at the suit of Jesse D. Elliott. That memorandum states that the judgment was for \$400, damages and costs, "to be released on payment of \$175, with interest from the 9th of November 1819, and costs."

This case is one in which it is desirable to afford relief if it can be done

without infringing upon settled principles. The claim of the United States against the petitioner was of some twenty-five years' standing when suit was brought. Her liability is as the representative of a security; and the delay in the adjustment of this claim for a credit is owing to the want of time on the part of Congress for the twenty-two years since its first presentation. The facts that the claimant is a security, that the great lapse of time is not the fault of the principal or the security, should, as the committee think, entitle the claimant to a liberal construction of the evidence. From the considerations stated, the committee recommend an allowance of a credit upon the judgment against the petitioner of \$245 10, and interest upon that sum, at the rate of six per cent., from the time that interest was calculated upon the balance appearing to be due from G. K. Spence upon the books of the Treasury Department, for Treasury notes received by him in 1815, and of \$175, and interest thereupon from the 9th day of November, 1819, or from such time as interest was calculated upon the balance appearing to be due from G. K. Spence upon the books of the Treasury Department, for Treasury notes received by him in 1815, if such interest was not calculated from a time anterior to the said 9th day of November; and for that purpose the committee herewith report a bill.

BALTIMORE, *April 14, 1840.*

I hereby certify and declare that the following enumerated brokers, S. & M. Allen, William B. B. Young, and George Clark, (for S. & M. Allen,) then of the city of New York, did, in the months of April and May, 1815, discount, severally, for me certain sums of money in Treasury notes of the denomination of "\$100" each, which I had received at sundry times of James Beatty and John Bullers, Esqs., navy agents at Baltimore and New York, respectively, at the following rates of discount, viz :

1815—April 21, S. & M. Allen, \$2,000 at 6 per cent.	-	-	\$120 00
Do 27, W. B. B. Young, \$1,000 at 5½ per cent.	-	-	52 50
Do 29, S. & M. Allen, \$400 at 7½ per cent.	-	-	30 00
May 2, S. & M. Allen, \$300 at 7½ per cent.	-	-	22 50
Do 2, S. & M. Allen, \$135 at 6 per cent.	-	-	8 10
Do 9, Geo. Clark, for S. & M. Allen, \$200 at 6 per cent.	-	-	12 00

Amounting in all to - - - \$245 10

Being the true amount actually paid to the said brokers as a discount or deduction on and from the aforesaid Treasury notes; that the residue, after making said deductions, was received partly in the current bills of the city, for the payment of three months' advance to the officers, (agreeably to an order issued by Commodore Decatur, not long before the sailing of the squadron for the Mediterranean, as was customary previous to a departure on a foreign cruise,) and partly in coin, for a similar purpose and other uses of the United States ship Ontario while abroad; that the discount was procured by me in good faith for and on account of the United States Government, I holding and conscientiously believing it to be responsible for the deficiency; and, finally, I declare and make oath that the current bills and coin remaining and resulting from the transaction were

all and wholly disbursed by me for and on account of the Government of the United States, (and for no other purpose,) in my official capacity.

Furthermore, the sum of \$253 32 paid by me for and on account of the United States, as a discount originally procured on "Treasury notes," and converted into Spanish dollars, to the amount of \$1,000, by Purser Thorn, at the same time and place, for the use of the frigate Constellation—loaned or transferred afterwards to the United States ship Ontario (the latter vessel remaining out, and the former returning to the United States)—for which, and no more, I gave my official receipt, as purser, holding "myself accountable to the Navy Department." This amount of discount, instead of being charged to and claimed of the Government, under the head of "contingencies," (collaterally with my official receipt to him for the \$1,000,) by Purser Thorn, was claimed of the commander of the United States ship Ontario, Captain Elliott, as due Thorn on private account, because Elliott had partly negotiated with him for the one thousand hard dollars for the use of the officers and crew of the United States ship Ontario. This discount on Treasury notes, of the nature of a premium for Spanish coin, Captain Elliott declined paying, but was eventually compelled to admit and pay, by threat of legal process. Captain Elliott then sued me for the amount, which I resisted on the previously assumed ground that Thorn's proper course was an application to the Treasury Department, in the regular presentation of his accounts for settlement, as in all such cases, and that Purser Thorn and myself, I conceived, were the only legitimate parties in the transaction. Holding this belief from the first, I, in accordance, gave Captain Elliott a written assurance or obligation that as I viewed it as an affair between myself and Thorn *only*, as pursers, between whom it should finally be settled, or words to that effect, which it appears to have absolved him altogether from liability, assured however at the time I should never hear more of it, while, also, he insisted upon the written obligation being given him to save him from any difficulty that might possibly happen. Upon this written assurance or obligation I was cast in court—having \$253 32 to pay, unnecessarily and wrongfully, by one misstep made by Purser Thorn in the onset for the refundment of his small claim.

Amounts of loss sustained recapitulated.

Amount of discount on Treasury notes at New York	-	-	\$245 10
Amount of discount on Treasury notes by Captain Elliott and Thorn, finally recovered of me	-	-	253 32
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			\$498 42

GROEME KEITH SPENCE,

Formerly Purser in the U. S. Navy, and attached to ship Ontario.

STATE OF MARYLAND, *City of Baltimore :*

On this thirtieth day of April, 1840, before me, a justice of the peace of the State of Maryland in and for the city of Baltimore, personally appeared Groeme K. Spence, and made oath, on the Holy Evangelists of Almighty God, that the facts and statements in the foregoing instrument are just and true; that the moneys therein charged was paid as charged; that

he has received no part thereof, directly or indirectly, nor any security or satisfaction, to the best of his knowledge and belief.

Sworn to before me,

SAMUEL FARNANDES.

STATE OF MARYLAND, *Baltimore county, set :*

I hereby certify that Samuel Farnandes, the gentleman before whom the above deposition was made, and who hath thereto subscribed his name, was, at the time of so doing, a justice of the peace of the State of Maryland in and for the city of Baltimore duly commissioned and sworn.

In testimony whereof, I have hereto set my hand, and affixed the seal [L. s.] of Baltimore county court, this thirtieth day of April, 1840.

THOMAS KELL, *Clerk.*

